

COTTONWOOD HEIGHTS

RESOLUTION NO. 2008-73

A RESOLUTION APPROVING AN AGREEMENT FOR CONSTRUCTION SERVICES BETWEEN COTTONWOOD HEIGHTS AND STAPP CONSTRUCTION, INC. (2008-09 ADA RAMP PROJECT)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met on 9 December 2008 to consider, among other things, approving an agreement for construction services (the "*Agreement*") with Stapp Construction, Inc. ("*Contractor*") whereunder the City would retain Contractor to provide all labor and materials required to complete City's project no. CHC.195, "ADA Ramp Construction Projects and Waterway Reconstruction Projects at Various Locations Within the City" (the "*Project*") on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; and

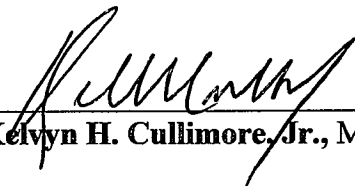
WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with Contractor is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.


This Resolution, assigned no. 2008-73, shall take effect immediately upon passage.

PASSED AND APPROVED this 9th day of December 2008.

COTTONWOOD HEIGHTS CITY COUNCIL

By 
Kervyn H. Cullimore, Jr., Mayor




Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Don J. Antczak	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Bruce T. Jones	Absent [†]	Yea <input type="checkbox"/> Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 9th day of December 2008.

RECORDED this 10 day of December 2008.

WST\CH514997.1

Agreement for Construction Services

THIS AGREEMENT FOR CONSTRUCTION SERVICES ("*Agreement*") is made effective __ December 2008 between **STAPP CONSTRUCTION, INC.**, a Utah corporation whose address is 649 West 250 South, Farmington, UT 84025 ("*Contractor*"), and the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*").

RECITALS:

A. City is in need of the construction services described herein, having heretofore requested bids (the "*RFB*") for its project no. CHC.195, "ADA Ramp Construction Projects and Waterway Reconstruction Projects at Various Locations Within the City" (the "*Project*").

B. On 23 October 2008, bids were opened and read aloud, and thereafter were reviewed and tabulated by City's engineer, Gilson Engineering, Inc. ("*Engineer*"). Based on such review and tabulation, Engineer has recommended that City enter into a contract with Contractor for the construction materials and services needed to complete the Project.

C. Contractor is licensed in the state of Utah to act as a general contractor and to provide construction services of the type described herein.

D. City desires to retain Contractor to provide the construction materials and services (the "*Work*") in connection with the Project, as described in the Contract Documents (defined below).

E. Contractor desires to perform the Work on the terms and conditions specified in this Agreement and the other Contract Documents.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Contract Documents.** In this Agreement, the term "*Contract Documents*" means this Agreement, the AIA Document A201-1997 "General Conditions of the Contract for Construction" (the "*General Conditions*"), any and all drawings, specifications, addenda, etc. relating to the Project or any of the Contract Documents issued prior to the date of this Agreement, and any Modifications issued after the execution of this Agreement. Such documents are expressly made a part of this Agreement as if completely set forth herein. A more detailed listing of the Contract Documents, other than Modifications, is set forth in section 13 below. Capitalized terms not otherwise defined in this Agreement shall have the meanings specified in the General Conditions or other Contract Documents.

2. **Engagement to Perform Work.** City engages Contractor to perform, and Contractor agrees to furnish to City, the Work. Contractor shall fully complete the Work strictly as described

in the Contract Documents or reasonably inferable to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. Contractor shall perform the Work in a good, workmanlike, finished and lien-free manner using only best quality materials. Contractor shall comply with all applicable laws, regulations and rules and shall indemnify and hold City harmless from Contractor's failure to so act. Contractor continuously shall provide at its own cost until after final completion of the Work all insurance coverage specified in attached exhibit "A," together with such enhanced coverage as may be specified in any of the Contract Documents.

3. **City's Representative.** City's representatives are its Deputy Manager, Kevin Smith, and Engineer; provided, however, that City's representatives are not authorized or have no authority to cause the Contract Price to exceed the amount budgeted by City's City Council for the same.

4. **Contractor's Representative.** Contractor's representative is Greg Stapp, who has the rights, authorities and duties assigned to Contractor in the Contract Document. Contractor may designate a new representative upon written notice to City.

5. **Contract Price.** The Contract Price shall be \$104,880.00 as shown on attached exhibit "B" entitled "Bid Tabulation," which includes the full cost for all labor, materials, supervision, tools, equipment, hoisting, and supplied necessary to fully complete the Work. Without limiting the generality of the foregoing, the Contract Price shall be deemed to include, without limitation, the cost of all bonds, insurance, permits and fees required, and all charges, expenses or assessments of whatever kind or character, except as otherwise specified herein.

6. **Contract Time.** Contractor shall commence the Work on or before _____ 200__ and shall assure that (a) substantial completion of the Work occurs no later than _____ 2009, and (b) final completion of the Work occurs no later than 30 June 2009. Permitting Contractor to continue and finish any part of the Work after the time fixed for its completion (as such time may previously have been extended), whether or not a new completion date is established, shall not operate as a waiver of any of City's rights under this Agreement.

7. **Operation of Utilities.** Contractor, its agents or employees, shall not cause any interruption of any utility service in connection with the Work without City's prior written approval.

8. **City's Right of Offset.** City shall be entitled to deduct and retain damages out of any money which may be due or become due to Contractor. To the extent that City's damages exceed any amounts that otherwise would be due Contractor, Contractor shall be liable for such amounts and shall pay the same to City promptly on City's written demand.

9. **Payment Procedures.**

(a) **Progress Payments.** City shall make progress payments against the Contract Price, equal to 90% of the Work satisfactorily completed as of the date of Contractor's invoice, as determined by City. No more frequently than once each calendar month, Contractor shall submit an Application for Payment in a form acceptable to the City and in accordance with the General Conditions. Unless otherwise specified by City, all payment requests shall be made using AIA forms

G702 and G703 with conditional lien releases. Payment shall not become due or payable for any contract item not provided or installed by Contractor exactly as indicated in the Contract Documents. If an Application for Payment satisfies all the terms and conditions of the Contract Documents, and it is received by the City not later than the 20th day of a month, then City shall make such progress payment to Contractor not later than the 10th day of the following month. City may, at its option, issue joint two-party checks payable to Contractor and its subcontractors or material suppliers with special lien waiver endorsements. All progress payments shall be subject to correction by City upon written notice to Contractor, and Contractor promptly shall refund to City any sums paid in error.

(b) **Withholding Payment.** City reserves the right to withhold payment from Contractor for non-compliance with any provision of the Contract Documents.

(c) **Final Payment.** After completion of all Work and Punch List items, City's receipt of final lien waivers signed by Contractor and all of Contractor's subcontractors and material suppliers, and full satisfaction of all of Contractor's other obligations under the Contract Documents, City shall pay to Contractor the unpaid balance of the Contract Price, after deducting therefrom all previous payments, liquidated damages, and other amounts to be retained. All prior progress payments shall be subject to correction in the final payment. The final payment shall not be due and payable until the expiration of 30 days after City's receipt of Contractor's request for final payment.

(d) **Submittals; Guaranty.** Final payment shall not be made until Contractor has delivered and City has accepted (a) all submittals specified in the General Conditions, and (b) Contractor's written guaranty of the Work, agreeing to make good without cost to City any and all defects due to defective workmanship and/or materials which may appear within one year of final completion of the Work or such longer period as may be established in the Contract Documents.

10. **Changes to Work.** No money will be paid to Contractor for any changes in the Work in the absence of a written change order executed by City.

11. **Citizens to Receive Hiring Preference.** To the extent required by the provisions of UTAH CODE ANN. §34-30-1, Contractor shall give preference in the employment of workmen in the construction of the Project who are citizens of the United States or who have declared their intention of becoming citizens. If Contractor fails to comply with the provisions of this paragraph, this Agreement shall be voidable at City's option.

12. **Representations and Warranties.** In addition to any representations and warranties contained in the Contract Documents, as an inducement to City to execute this Agreement, Contractor represents and warrants as follows to City, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:

(a) **Financial Capacity.** That Contractor and its subcontractors are financially solvent, able to pay all debts as they mature, and possess sufficient working capital to complete the Work and perform all obligations hereunder.

(b) **Logistical Capacity.** That Contractor is able to furnish the plant, tools,

materials, supplies, equipment and laborers required to complete the Work and perform its obligations hereunder.

(c) Qualifications. That Contractor is authorized to do business in the state of Utah and is properly licensed by all necessary governmental, public and quasi public authorities having jurisdiction over it and over the Work.

(d) Authorization. That Contractor's execution of this Agreement and its performance thereof is within its duly authorized power.

(e) Due Diligence. That Contractor's duly authorized representative has visited the site for the referenced project, familiarized itself with the locale and the special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.

(f) Expertise. That Contractor possesses a high level of experience and expertise in the business, administration, construction, construction management and superintendents of projects of the size, complexity and nature of this particular project, and will perform the Work with care, skill and diligence of such a contractor.

13. Detailed List of Contract Documents. The Contract Documents (except for Modifications issued after execution of this Agreement) are as follows:

(a) Agreement. This Agreement;

(b) General Conditions. The General Conditions;

(c) Plans and Specifications. All plans and specifications issued by City to bidders in connection with the RFB or any other aspect of the bid process, including any specifications and supplementary and other conditions specified therein;

(d) Addenda. Any and all previously-issued addenda to the Plans and Specifications referenced above; and

(e) Bid. Contractor's bid for the Work that was opened on 23 October 2008.

14. Conflicts. In the event of inconsistencies within or between any of the Contract Documents or applicable legal requirements, Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirements, either or both in accordance with City's interpretation.

15. Laws and Regulations. Contractor shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances, including without limitation, those governing wages, hours, desegregation, employment discrimination, workers' compensation, employer's liability and safety. Contractor shall comply with equal opportunity laws and regulations to the extent that they are applicable.

16. **Independent Contractor Status.** Contractor shall perform the Work as an independent contractor, and all persons employed by Contractor in connection herewith shall be employees or independent contractors of Contractor and not employees of City in any respect.

(a) **Control.** Contractor shall have complete control and discretion over all personnel providing Work hereunder.

(b) **Salary and Wages.** City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Work hereunder.

(c) **No Employment Benefits.** All personnel providing Work are and shall be and remain Contractor's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

17. **Indemnification.** Contractor shall defend, indemnify, save and hold harmless City (including, without limitation, its elected and appointed officers, employees, successors and assigns) from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorneys' fees and cost of suit), relating to or arising in any way from the Work provided, or to be provided, hereunder, and Contractor's full and timely performance of its obligations under this Agreement. Contractor shall so defend, indemnify, save and hold harmless City whether such demands, liabilities, claims, damages, actions and/or proceedings are attributable to the simple negligence, gross negligence, recklessness or intentional misconduct of Contractor (or any officers, employees, agents, subcontractors, etc. of Contractor), or under any other applicable legal theory, and shall be effective whether or not such negligence, recklessness or other misconduct reasonably was foreseeable. Nothing herein shall, however, require Contractor to indemnify as provided in this section with respect to (a) City's own negligence or intentional misconduct, or (b) any demand, liability, claim, damage, action and/or proceeding not alleged to relate to the Services provided, or to be provided, by Contractor hereunder.

18. **Termination for Convenience.** City may terminate any this Agreement at any time prior to completion, with or without cause, by written notice to Contractor. Upon any such termination, City shall pay Contractor for all Work satisfactorily performed by Contractor as of the date of termination, excluding damages or anticipated profits on work not yet performed.

19. **Miscellaneous Provisions.**

(a) **Headings.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe or effect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(b) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon all counterparts were upon the same instrument. All signed counterparts shall be deemed to be one original.

(c) **Plurals.** Whenever the context may require, any pronoun used herein shall

include the corresponding masculine, feminine or neuter form and the singular form or noun, pronouns and verbs shall include the plurals and visa versa.

(d) Severability. The provisions of this Agreement are severable and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) Waiver. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu of limitations of any other right, remedy or priority allowed by law.

(h) Entire Agreement. This Agreement, along with the Contract Documents, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the State of Utah.

(j) Attorneys Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and a reasonable attorneys' fee whether such sums are expended with or without suit, at trial, on appeal, or in bankruptcy or insolvency proceeding.

(k) Time of Essence. Time is the essence in this Agreement.

(l) No Assignment. No party may assign its rights or delegate its duties under any of the Contract Documents without the prior written consent of the other party.

(m) Binding Effect. City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

[Signature page follows].

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS

LINDA W. DUNLAVY, Recorder
Date signed _____

By: _____
KELVYN H. CULLIMORE, JR., Mayor
Date signed _____

CONTRACTOR:

ATTEST:

STAPP CONSTRUCTION, INC., a Utah
corporation

By: _____

By: _____
_____, President

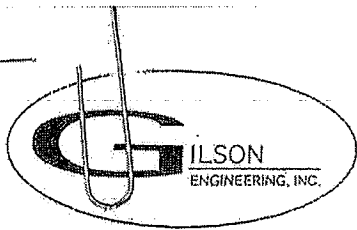
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**Exhibit “A” to
Agreement for Construction Services**

(Attach copy of City’s Standard Insurance Requirements)

**Exhibit “B” to
Agreement for Construction Services**

(Attach copy of Bid Tabulation)



CONSULTING ENGINEERS AND SURVEYORS

October 24, 2008

Cottonwood Heights City
1265 East Ft Union Blvd
Cottonwood Heights, Utah 84047

**PROJECT NAME - "ADA RAMP CONSTRUCTION PROJECTS AND CONCRETE
WATERWAY RECONSTRUCTION PROJECTS AT VARIOUS LOCATIONS WITHIN
THE CITY --- PROJECT # CHC.195"**

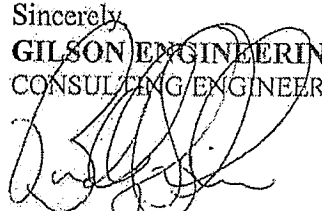
Dear Mayor and City Council:

On October 23, 2008 bids for work on the above referenced project were opened and read aloud.
The three bidders were as follows:

1.	Stapp Construction	\$104,880.00
2.	Lyndon Jones Construction	\$106,400.00
3.	Jordan Valley Construction	\$130,600.00

The bids have been reviewed and tabulated in the enclosed reports. We recommend the contract be reviewed by the Mayor and City Council and awarded to **Stapp Construction.**

Sincerely,
GILSON ENGINEERING, INC.
CONSULTING ENGINEERS AND SURVEYORS


Bradley S. Gilson, P.E.
Cottonwood Heights City Engineer

BSG/tje

Enclosures